IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No.204 of 2000

Reserved on : 22.11.2007

Date of Decision : December 28, 2007.

Dr. Y. S. Parmar University of Hort. & Forestry ..Appellant.

Versus:

Shri Jai Lal & others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes

For the appellant: Mr. B. S. Attri, Advocate.

For respondents 1 to 3: Mr. Bhupinder Gupta, Sr. Advocate with Ms. Charu Gupta, Advocate.

For respondent No.4 : Mr. Ashok Chaudhry, Addl. A. G.

Sanjay Karol, J.

The present appeal arises out of the award dated 26.4.2000 passed by the Addl. District Judge, Solan in Land Reference No. 3-S/4 of 1995 titled as Jia Lal and others v. State of H.P. and another,

The land belonging to various land owners including the respondents herein was acquired by the State for the appellant University vide notification dated 13.7.1971 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

referred to as 'the Act'). With regard to the building existing on land comprising khasra No. 194/60/1, a supplementary award dated 3.4.1994 passed by the Collector was communicated on 19.4.1995. A sum of Rs.83,853/- was awarded as compensation in favour of the legal heirs of late Shri Ram Lal the original claimant, as the market value of the building and super structure. Being dis-satisfied with the same, the land owners filed reference petition u/s 18 of the Act seeking enhancement of the awarded compensation.

Claimant Jia lal (PW-1) examined himself and two experts S/Shri Surjeet Singh (PW-2) and R. P. Swami (PW-3). The respondent-University produced 4 witnesses; namely, S/Shri Mohinder Singh (RW-1), Om Parkash (RW-2), M. M. Chopra (RW-3) and Vidya Dutt (RW-4). Various documents were also proved and duly exhibited on record.

Based on the material on record, the Court below assessed the market value of the acquired property at Rs.1,66,218/- and awarded the same accordingly. (Rs.83,853/- as awarded by the Collector + Rs.82,365/- enhanced compensation amount to Rs.1,66,218/-).

PW-2 a qualified Engineer, after physically inspecting the building, prepared his valuation report (Ext.PW-2/A). As per his statement and report, the valuation has been carried out in accordance with the working cost index and the H.P.P.W.D. schedule of rates of 1968. According to him, the acquired

premises consists of a separate cowshed and the main building having basement and ground floor consisting of 6 rooms with a separate block having a kitchen and bathroom. At the time of acquisition, the building was constructed of stones and was in good and habitable condition.

PW-3 a retired Junior Engineer of the HPPWD of the State carried out the valuation and prepared an estimate of the building in question in terms of his reports Ext.PW-3/A and Ext.PW-3/B. The same was done as per the HPPWD schedule of rates 1987 with working cost index of the year 1996.

These witnesses were examined at length and their statements are trustworthy, cogent, consistent and reliable. The acquisition proceedings were initiated in the year 1971 and the supplementary award was passed in the year 1994. The appellant has been using the property since then.

The defence witnesses have simply placed on record the estimate prepared for determining the market value prior to the announcement of the award. The estimate carried out by the appellant as sought to be placed on record vide documents marks A, B, C, D, & E, in my view, has been rightly dis-believed by the Court below while arriving at its conclusion. The same was prepared in the absence of the claimant. A comparative examination and assessment of the evidence produced before the respective parties lend credence to the same. PW-3 is an expert who was a former employee of the appellant and had in

fact carried out his own valuation, on the asking of the Govt. which in terms of Ext.PW-3/B was Rs.13,76,000/-. Even though this valuation was got carried out in the year 1994, however, it is indicative of the good condition of the acquired property. RW-2 has stated that the valuation for determining the market price, awarded by the Collector is also based on the HPPWD schedule of rates of 1968.

As is evident from reports (Ext.PW-2/A and Ext.PW-2/B), the estimate is based upon the HPPWD schedule of rates of 1968 with working cost of index at the time of acquisition of the property. Therefore, in my view, there is no infirmity in the findings recorded by the Court below while arriving at its conclusion.

Learned counsel for the appellant has sought to argue that in the report (Ext.PW-2/B) the escalation with regard to the excavation in foundations has been wrongly applied and is not in accordance with the HPPWD schedule of rates, 1968. In support of his submissions, he has placed on record the schedule of rates and has sought to rely upon Item No. 9 of Part III (A) (earth work of the said schedule) to contend that the excavation in foundations, trenches in "pick work" cannot be more than 171.20 per cubic mtr. The contention of the learned counsel needs to be rejected for the reason that Item No.9 of the said schedule is not even applicable as the said item does not pertain to the excavation work estimated by the Expert in his report

(Ext.PW-2/B) which clearly mentions that the excavation work in foundations and general hill cutting is in "pick and jumper work" which is different from Item No.9 of the said schedule.

During the pendency of the appeal, CMP No. 375 of 2007 was filed to re-summon the expert Shri Surjit Singh (PW-2) and cross examine him with respect to the report (Ext.PW-2/B). According to the appellant, the Expert has wrongly taken the cost index as 45% and wrongly applied the HPPWD Schedule of Rates of 1968 with regard to the item of excavation and other items. In my view, the application needs to be rejected for the reason that the witness was cross examined at length during trial and it is also the case of the respondents that the valuation was to be carried out in accordance with the HPPWD schedule of rates 1968. The present appeal was admitted on 16.8.2000 and the application was filed only in June, 2007 when the matter was listed for hearing. In my view, the application is highly belated and no ground is made out for re-summoning the witness for further cross-examination. No fresh material has been discovered which is required to be produced on record. No prejudice is being caused to the appellant and there is no inadvertence in not cross-examining the witness during trial. The application needs to be rejected.

Learned counsel for the appellant has submitted that the reference petition itself was not maintainable as the claimant had undertaken to accept the awarded amount. The contention

needs to be rejected for the simple reason that reference petition was filed on 17.5.1995 i.e. prior to the statements of the LRs of the original land owner being recorded. The statement was recorded in different context so as to settle the issue of apportionment amongst the legal heirs. The very fact that the applicants had filed an application under Section 18 prior to the recording of their statements is manifest of their intention of assailing the impugned award. {*Ajit Singh and others* v. *State of Punjab and others* (1994(4) SCC 67)}.

I find no infirmity in the impugned award dated 26.4.2000. The present appeal as well as CMP No. 375 of 2007 are accordingly dismissed.

(Sanjay Karol),
Judge.

December 28, 2007.
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